

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4541 of 1983

Date of decision: 21-8-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANDRIKABEN D TANNA

Versus

DIRECTOR OF HEALTH SERVICES & MEDICAL EDUCATION

Appearance:

MR BP TANNA for Petitioner

Mr. Nigam Shukla for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/08/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner, a Staff Nurse of the Government Hospital, Porbandar, has filed this petition for a direction to the respondents to treat her on earned leave during the period 14th May 1980 to 13th June 1980. Further prayer has been made to direct the respondents to pay to the petitioner salary for the period 14-6-1980 to 4-8-1980 treating the said period as earned leave.

According to the respondents the petitioner had remained absent from duty without leave during the aforesaid period. The case of the petitioner, on the other hand, is that she proceeded on leave, though without prior sanction of the same, on 14th May, 1980 due to illness of her brother. On 13th June, 1980 she had gone to resume her duty, but she was not allowed to do so. She was asked by the Matron to meet the Civil Surgeon in the matter before joining duty. Accordingly she went to the office of the Civil Surgeon where the Civil Surgeon in turn asked the petitioner to first see the Director of the Department. It is not in dispute that the petitioner was taken on duty on 5th August, 1980 only after receiving telephonic instructions from the Directorate. So there are two periods for consideration, i.e. the period from 14-5-1980 to 13-6-1980 and 13-6-1980 to 4-8-1980.

2. After going through the contents of the reply filed by the respondents it appears that the contention of the petitioner that she was not allowed to resume duty on 13th June, 1980 has some force. It appears to be a case where the petitioner has been asked to go from pillar to post to resume duty. If it is a case where the petitioner has gone on leave without sanction thereof, on return she should have been allowed to resume her duty and thereafter action could have been taken by the respondents for the alleged willful absence from duty. But the way in which the petitioner was dealt with after her return from leave was not proper and justified.

3. So far as the first spell of leave is concerned, the petitioner has come up with the case that she had applied for leave. Respondents have come up with the case that the petitioner had not given her address in the application and therefore rejection of leave could not be communicated to her. It is not in dispute that the letter of rejection of leave was given to the petitioner on 13-6-1980. The fact is that application was submitted by the petitioner, but address where the petitioner wanted to reside during the leave was not given. The petitioner has come up with the case that she has to her credit sufficient earned leave. It is true that the petitioner cannot claim sanction of particular category of leave as it is in the discretion of the authority concerned. But before passing order sanctioning leave without pay, it would have been proper that the petitioner should have been given personal hearing. Sanction of leave without pay may have many repercussions like change of date of increment and in some cases break in service. When the order has such a serious civil

consequences, the same could be made only after giving full opportunity of hearing to the petitioner. So far as the second spell of absence is concerned, as discussed earlier, the petitioner can not be wholly blamed. But I do not want to express any final opinion as I consider it proper that this matter should be considered afresh by the concerned respondent after giving an opportunity of hearing to the petitioner.

4. In the result this petition is disposed of with the direction to the respondents to consider afresh the case of the petitioner regarding which category of leave has to be sanctioned in accordance with law for the period 14-5-1980 to 4-8-1980 and to pass appropriate order after giving an opportunity of hearing to the petitioner within a period of three months from the date of receipt of certified copy of this order. Rule made absolute in the aforesaid terms. No order as to costs.

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